

REMARKS

Summary of the Amendment

Upon entry of the instant Amendment, claims 1, 43-45, 47 and 48 will have been amended. Accordingly, claims 1-14, 17-33 and 35-48 will be pending with claims 1, 43, 44 and 45 being in independent form.

Summary of the Official Action

In the Final Office Action, the Examiner again withdrew claims 4-7 as being directed to a non-elected species. Additionally, the Examiner rejected claims 1-3, 8-14, 17-33 and 35-48 over the art of record. By the present amendment and remarks, Applicant submits that the rejections have been overcome, and respectfully requests reconsideration of the outstanding Office Action and allowance of the present application.

Claims 4-7 Are Withdrawn by the Examiner

Claims 4-7 were withdrawn by the Examiner because, the Examiner asserts, these claims are readable on Figs. 41-42 instead of Figs. 36-40.

While Applicant disagrees that these claims cannot be read on the elected species, Applicant requests that these claims be rejoined if and when claim 1 is found to be allowed/allowable.

Traversal of Rejections Affirmed by the Board of Appeals

Applicant respectfully traverses the rejection of claims 1-3, 8-14, 17-33 and 35-42 under 35

U.S.C. § 102(b) as anticipated or as unpatentable under 35 U.S.C. § 103(a) over US patent 6,156,051 to SCHRAGA. Applicant also respectfully traverses the rejection of claims 24-26 and 32-35 under 35 U.S.C. § 103(a) as unpatentable over SCHRAGA alone.

The Examiner asserts that the basis of this rejection is proper because the BOARD OF APPEALS determined that claims 15 and 16 were unpatentable.

Applicant disagrees. Applicant notes that the combination of claims 1, 15 and 16 was not considered by the BOARD. Applicant appealed the rejection of claims 1 and 15 as well as claims 1 and 16. In the previously filed Amendment, claim 1 was amended to recite the features of claims 1, 15 and 16. This combination of features was not specifically addressed by the BOARD.

Furthermore, the BOARD agreed with the Examiner that the recited body can be broadly interpreted as member 20C of SCHRAGA (see Fig. 16) and the cap can be interpreted as member 50. However, this interpretation is now clearly improper because the so-called body 20C of SCHRAGA has no trigger movably mounted thereon. Instead, it is member 20A which has the trigger mounted thereon. Thus, the Examiner's reliance of the BOARD decision is improper.

Furthermore, Applicant has, in an effort to advance prosecution, herein amended claim 1 to further recite features which are clearly lacking in the applied art considered by the BOARD.

For example, claim 1 has been additionally amended to recite that the first stop surface moves with the holding member and is arranged closer to the front end of the holding member than to the rear end of the holding member and that the second stop surface extending inwardly from the body and is arranged closer to a front end of the body than to a rear end of the body and between the first stop surface and the skin engaging end. This is clearly not the case in SCHRAGA. Fig. 16 of

P23568.A17

SCHRAGA shows depth adjustment controlled by contact between flange 176 (first stop surface) and wall 174 (second stop surface). These stop surfaces are clearly not arranged closer to the front end of the holding member than to the rear end of the holding member and/or closer to a front end of the body than to a rear end of the body. Instead, they are arranged closer to the rear end of the holding member 30 than to the front end thereof and closer to the rear end of the body 20A than to the front end thereof.

Thus, Applicant submits that the above-noted document fail to disclose or suggest the features recited in at least independent claim 1. Because no proper modification of the above-noted document discloses or suggests at least the above-noted features of the instant invention, Applicant submits that no proper modification of this document can render unpatentable the combination of features recited in at least independent claim 1.

Furthermore, Applicant submits that there is no motivation or rationale disclosed or suggested in the art to modify any of the applied document in the manner asserted by the Examiner. Nor does the Examiner's opinion provide a proper basis for these features or for the motivation to modify this document, in the manner suggested by the Examiner. Therefore, Applicant submits that the invention as recited in at least independent claim 1 is not rendered obvious by any reasonable inspection of these documents.

Additionally, Applicant submits that dependent claims 2, 3, 8-14, 17-33 and 35-42 are allowable at least for the reason that these claims depend from an allowable base claim and because these claims recite additional features that further define the present invention.

Applicant requests that the Examiner reconsider and withdraw the rejection of the above-

noted claims under 35 U.S.C. § 102(b)/103(a).

Traversal of Rejection Under 35 USC § 103(a)

Applicant respectfully traverses the rejection of claims 43-48 under 35 U.S.C. § 103(a) as unpatentable over US patent Re. 32,922 to LEVIN et al. in view of US patent 4,469,110 to SLAMA.

The Examiner asserts that the combination of teachings of these documents disclosed or suggests the features of the above-noted claims. Applicant respectfully disagrees.

Claim 43 recites, among other things, a first stop surface arranged on a front portion of the holding member and being disposed inside the body and a second stop surface axially retained to a front portion of the body and being disposed inside the body, wherein contact between the first and second stop surfaces defines a puncturing position of the lancet needle. These features are not disclosed or suggested by LEVIN and SLAMA.

LEVIN utilizes contact between an annular stop surface (first stop surface) of member 41 and rear surface 31 (second stop surface) of body 5 to define a puncturing position of the lancet needle 27 (see Fig. 3). As such, the first stop surface of member 41 is arranged outside the body 5 and not inside the body 5. Furthermore, the second stop surface 31 is also arranged outside the body 5 and not inside the body 5. Still further, in LEVIN, the first stop surface of member 41 is arranged on a rear portion of the holding member 23/29/41/43 and not on a front portion as required by claim 43.

SLAMA does not cure the deficiencies of LEVIN. SLAMA utilizes contact between member 5a and surface 7 of the body to define a puncturing position of the lancet needle 1. As such, the first stop surface of member 5 is not arranged inside the body 2 (the portion of member 5 which contacts

surface 7 is not arranged inside the body 2). Furthermore, the second stop surface 7 is arranged on an outer wall of the body 2 and therefore not inside the body 2. Still further, in SLAMA, the first stop surface of member 5 is arranged (at best) in the middle of the holding member 3 (see Fig. 4) and closer to a rear end of the holding member 3 (see Fig. 1). Thus, it cannot be reasonably argued that SLAMA teaches to arranged the first stop surface on a front portion of the holding member as required by claim 43.

Claim 44 recites, among other things, a back cap configured to move the holding member to a retracted position and having a portion which extends within a rear portion of the body, a first stop surface coupled to a front portion of the holding member and being disposed inside the body, and a second stop surface axially retained to a front portion of the body and being disposed inside the body, wherein contact between the first and second stop surfaces defines a puncturing position of the lancet needle.

LEVIN lacks these features. While it is true that LEVIN teaches a back cap 47, the back cap 47 has no portion which extends inside the body 5. Applicant notes, for example, that the proximal end of the back cap 47 (in front of flange 49) slidably engages an outer surface of a rear end of the body 5, and, unlike the invention, has no portion which is arranged or extends inside the body 5, much less, the rear end thereof. Furthermore, as discussed above, LEVIN lacks the first and second stop surfaces arranged inside the body 5.

SLAMA does not cure the deficiencies of LEVIN. SLAMA lacks any back cap whatsoever. Furthermore, as explained above, SLAMA lacks the first and second stop surfaces arranged inside the body 2.

Claim 45 recites, among other things, a first stop surface arranged on the holding member and being disposed inside the body at a location that is closer to a front end of the body than to a rear end of the body when the holding member is in the intermediate position and a second stop surface arranged inside the body and located closer to the front end of the body than to the rear end of the body, wherein contact between the first and second stop surfaces defines the extended position.

LEVIN lacks these features. As discussed above, LEVIN lacks the first and second stop surfaces arranged inside the body 5.

SLAMA does not cure the deficiencies of LEVIN. As explained above, SLAMA also lacks the first and second stop surfaces arranged inside the body 2.

Thus, Applicant submits that the above-noted documents fail to disclose or suggest the features recited in at least independent claims 43-45. Because no proper combination of the above-noted documents discloses or suggests at least the above-noted features of the instant invention, Applicant submits that no proper modification of these documents can render unpatentable the combination of features recited in at least independent claims 43-45.

Furthermore, Applicant submits that there is no motivation or rationale disclosed or suggested in the art to modify any of the applied documents in the manner asserted by the Examiner. Nor does the Examiner's opinion provide a proper basis for these features or for the motivation to modify these documents, in the manner suggested by the Examiner. Therefore, Applicant submits that the invention as recited in at least independent claims 43-45 is not rendered obvious by any reasonable inspection of these documents.

Additionally, Applicant submits that dependent claims 46-48 are allowable at least for the reason that these claims depend from an allowable base claim and because these claims recite additional features that further define the present invention.

Applicant requests that the Examiner reconsider and withdraw the rejection of the above-noted claims under 35 U.S.C. § 103(a).

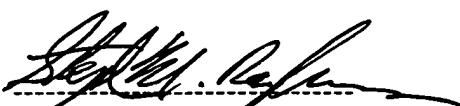
CONCLUSION

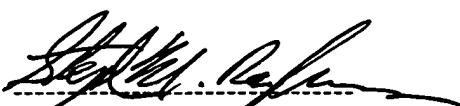
In view of the foregoing, it is submitted that none of the references of record, either taken alone or in any proper combination thereof, anticipates or renders obvious the Applicant's invention, as recited in each of the pending claims. The applied references of record have been discussed and distinguished, while significant claimed features of the present invention have been pointed out.

Accordingly, reconsideration of the outstanding Office Action and allowance of the present application and all the claims therein are respectfully requested and now believed to be appropriate.

The Commissioner is hereby authorized to refund excess payments and charge any additional fee necessary to have this paper entered to Deposit Account No. 19-0089.

Respectfully submitted,
S. SCHRAGA


Neil F. Greenblum
Reg. No. 28,394


Stephen M. Roylance
Reg. No. 31,296

February 3, 2009
GREENBLUM & BERNSTEIN, P.L.C.
1950 Roland Clarke Place
Reston, VA 20191
(703) 716-1191